IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. RICKY MARVIN ARNTSEN, Appellant.	))))))))))	No. 62241-2-I (Consolidated with Nos. 62641-8-I and 62741-4-I) DIVISION ONE UNPUBLISHED FILED: May 17, 2010

Cox, J. — Ricky Arntsen appeals his convictions of attempting to elude a pursuing police vehicle and first degree unlawful possession of a firearm. He claims that the trial court abused its discretion by declining to give a voluntary intoxication instruction and by refusing to determine that the two convictions constituted the same criminal conduct for sentencing purposes. He also claims there was no nexus between the crime of conviction and the restitution ordered. In his Statement of Additional Grounds for Review, Arntsen argues that the firearm evidence should have been suppressed for various reasons. He also contends he was denied his constitutional right to have the charges tried in a court with proper venue. Because Arntsen fails in his burden to demonstrate error, we affirm.

In the early morning hours of October 18, 2007, James Harris called

police and reported that he had been held at gunpoint by Ricky Arntsen at Andy's Motel in Edmonds until Harris signed a bill of sale and title to his Cadillac. While Edmonds Police officers spoke to Harris, Arntsen also called the police. He admitted that he had the Cadillac, claimed that Harris agreed to sell it, and agreed to return to the motel to discuss the matter. Later that morning, Arntsen's wife Anna drove the Cadillac to the motel. Police arrested her for possession of stolen property.

Detective David Honnen heard about the reported robbery on his radio and attempted to interview Anna at the police station. She refused to speak to him. He then spoke with patrol officers who had been involved in the initial investigation. He then drove to Andy's Motel with Detective Stephen Morrison to investigate further. As the detectives approached the motel driveway, Detective Honnen saw a car and driver matching Harris's description of Arntsen pull out of another driveway in a green Taurus. The car and driver headed southbound on Highway 99. Detective Honnen made a U-turn and followed the car. He called for a patrol car to make a traffic stop, but Edmonds police were too far away.

As he drove into King County, Detective Honnen asked dispatch to contact the Shoreline Police Department. While Arnsten was stopped in heavy traffic at the traffic signal at 145th Street and Highway 99, a Shoreline patrol car, with lights and siren activated, pulled behind Arntsten. The police directed him to pull over. Arntsen pulled to the shoulder with the patrol car following. But as he reached the shoulder, the light turned green, and Arntsen sped away.

Several police cars chased Arntsen, stopping him at the parking lot of a 7-Eleven store on Roosevelt Way near 1st Avenue in north Seattle. Detective Honnen stopped his car about 8 feet behind Arntsen. Arntsen suddenly put his car in reverse and rammed his car into the detective's car, crushing the hood. He then sped forward in an attempt to escape.

Officers shot Arntsen, hitting him twice. He crashed into a parked car. Detective Honnen and another officer pulled Arntsen out of the car and arrested him.

Police later searched the car, finding a .357 firearm on the front seat of Arntsen's car, partially covered by a t-shirt. The firearm was fully loaded with hollow point bullets and matched the description provided by Harris when he reported the robbery.

The Snohomish County prosecutor charged Arntsen with the following crimes: count I: first degree robbery; count II: attempting to elude a pursuing police vehicle; count III: second degree assault of Detective Morrison; count IV: second degree assault of Detective Honnen; and count V: unlawful possession of a firearm in the first degree. Through counsel, Arntsen moved for a change of venue. He argued that counts II – V occurred in King County and should be tried there. He also claimed that he would be prejudiced if those counts were tried separately from the robbery charge. He also made other arguments that are not pertinent to this appeal.

The trial court addressed Arntsen's motion for a change of venue at a

hearing. The State did not object to a change of venue on counts II – V, but would not agree to a change of venue on count I. Arntsen argued that he had a right to change venue under CrR 5.1(c). The trial court denied the motion for a change of venue on count I, the first degree robbery charge. But the trial court stated that joinder would be appropriate and gave Arntsen the choice of either joinder or a change of venue. "[G]iven the State's position, if you prefer to have the other counts tried in King County, I will grant a motion and sever those counts and direct a change of venue of those other counts to King County."[1]

As the attorneys discussed allowing time for Arntsen to choose, he stated on the record, "I don't need to think it through, Your Honor, we can keep it here."[2] After a break, the trial court signed an order stating: "The Court finds the defendant, after consultation with counsel, has made a knowing, intelligent [and] voluntary waiver of venue in [counts] 2 – 5."[3] Thereafter, Arntsen stated on the record:

> I don't voluntarily waive my right to the change of venue, I'm disagreeing with the Court that because the Court is saying that he does not want to grant the motion for change of venue and my choice between severing the cases and having a change of venue. I would rather have all the cases done at one time in one trial rather than have to choose to sever. And that's my -- so I don't waive the change of venue, I'm just going with the Court's motion -- the Court's decision on the motion and deciding that if I have to make a choice between having two trials or the cases held at one time, I'm accepting one trial with everything right here. And that's it.[4]

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[1] Report of Proceedings (December 6, 2007) at 10.

[2] Id. at 10-11.

[3] Clerk's Papers at 257.

Arntsen then filed an objection and motion to reconsider, claiming that his waiver of his right to trial in King County was "involuntary." He argued that the trial court's decision to force him to choose between his rights to joinder and proper venue rendered those rights meaningless. He asked the court to reconsider his request to transfer all the counts to King County. The trial court denied the motion.

At a hearing on June 6, 2008, the trial court granted Arntsen's motion to proceed pro se and appointed defense counsel as standby counsel. Trial began on June 9. There was no motion to suppress evidence.

Detective Honnen testified that he had asked Detective Morrison to accompany him to Andy's Motel because of the "nature of the investigation" involving "threatened use of a firearm," and he intended to "try to contact the witnesses and get to the bottom of what really happened." On cross-examination, Detective Honnen stated that when he had spoken with patrol officers about the robbery report, he had not yet seen any reports or witness statements. He learned that Harris was under investigation for drug dealing and stated that, given the circumstances, he intended to speak to Harris "at the onset of the investigation."

Detective Honnen testified that as he followed Arntsen from Edmonds down to 145th Street, Arntsen did not appear to know he was being followed and was leaning to the right, "maybe he was talking on the cell phone." He further

[4] Report of Proceedings (December 6, 2007) at 15.

testified that when Arntsen appeared to stop at the 7-Eleven, he stopped his car 10 to 15 feet from Arntsen's car, put the car in park, and was getting ready to get out when Arntsen's car suddenly "backed up and crashed into us . . . bounced up onto the hood," shattered the windshield and then "bounced off." After police shot Arntsen and his car finally stopped, Detective Honnen and Sergeant David Machado approached the car where Arntsen was sitting and commanded him to show his hands. Detective Honnen explained that he had his gun drawn because he thought it was "highly likely" that they "could be involved in a gun fight," "given the circumstances of the pursuit" and "the allegation that a gun was used in a robbery to take a vehicle." Sergeant Machado opened the door and removed Arntsen's seatbelt while Detective Honnen grabbed his left hand, pulled him out of the car, "put him face down on the pavement," and "handcuffed him." Detective Honnen said he did not look inside the car.

Seattle Police Detective Mark Hanf of the Crime Scene Investigation Unit testified that he was informed that nothing had been moved when he and his team arrived to document the scene and collect evidence. Detective Hanf testified about the view at the passenger side of Arntsen's car, "when you are on the outside of the vehicle on the right-hand side looking in the right front door window, which is broken out, . . .you could see in the front passenger seat clearly that of – partially of a gun, handgun." He identified pictures taken at the scene and introduced into evidence as accurately showing what he saw. He testified that the gun was loaded.

During the State's case, it moved to dismiss count I, the robbery charge. The prosecutor stated on the record that he did not believe that Harris would appear to testify. The trial court granted the motion to dismiss with prejudice. Shortly thereafter, the State rested.

Arntsen called his wife Anna, who testified that months earlier, Arntsen had purchased a gun from Harris, and she had stored the gun at a storage facility. She retrieved the gun from storage because Arntsen told her Harris wanted it back. She wrapped the gun in a t-shirt and put it in the trunk of the green Taurus she was driving. She then took cash to Andy's Motel for Arntsen to buy the Cadillac from Harris. When she took the gun out of the trunk and tried to give it to Harris, he told her he would get it later. She put the gun, still wrapped in the t-shirt, under the passenger seat of the Taurus.

Arntsen also called Edmonds Police Officer Aaron Frausto, one of the patrol officers who took the original robbery report from Harris at Andy's Motel. When Arntsen pointed out the inconsistencies in the written statements provided by Harris and Melissa Britt and Paula Perez, two women who were present at the time of the alleged robbery, Officer Frausto testified, "Based on the collective investigation, the verbal statements as well as written statements, collectively, we had probable cause to believe that the vehicle had been taken in a robbery."

Arntsen testified in his own defense that Harris had arranged to sell him the Cadillac and wanted his gun returned. So he had his wife get the gun and money and then met Harris at Andy's Motel. Arntsen testified that he drank

liquor and visited with Harris for a while. After he and Anna left with both the Cadillac and the Taurus, he received a call on his cell phone from Officer Frausto. The officer told him that Harris reported the car stolen and that Arnsten should bring it back. Arntsen told the officer about the title and bill of sale and agreed to come back. Arntsen later changed his mind and decided not to return. He testified that he was driving away from the area of Andy's Motel when he received a call from Anna, who told him that the police were looking for him "for kidnapping, for assault, for robbery" and had arrested her for possession of a stolen vehicle and a VUCSA. When he saw the police lights behind him, he "freaked out."

On cross-examination, Arntsen testified that the gun was in the car, but was not on the front passenger seat.

After the close of the evidence but before argument, Arntsen moved for a change of venue, arguing that because the State had dismissed count I, and the only remaining counts occurred in King County, the appropriate venue was King County. Noting that jeopardy had attached to all the remaining counts, the trial court denied the motion.

In closing, Arntsen argued that none of the officers who took him out of the car mentioned seeing the gun in the car because the gun was under the seat where Anna put it. He argued that the police found the gun after the shooting and moved it onto the seat to make the situation appear more dangerous and justify their tactics.

In his proposed instructions to the jury, Arntsen included an instruction referring to voluntary intoxication. There was no discussion on the record about the proposed instruction, but the trial court did not instruct the jury on voluntary intoxication.

The jury found Arntsen guilty of attempting to elude and unlawful possession of a firearm, but acquitted him of the two assault charges and answered "no" to a special verdict form asking if he was armed with a firearm during the commission of the eluding charge. At a sentencing hearing, Arntsen argued that his two convictions should be considered the same criminal conduct for purposes of his offender score because the State had argued "that the intent for the elude was because of the gun." The trial court disagreed and counted the convictions separately.

At a restitution hearing, the State sought restitution for the damage to Detective Honnen's car. Arntsen argued against any restitution because he was acquitted of the assault charge. The trial court found it was "clear from the evidence that [Arntsen] did commit an attempting to elude, and [was] still attempting to elude the pursuing police officers at the time [he] backed up into the car." The court ordered restitution in the amount requested.

Arntsen appeals.

VOLUNTARY INTOXICATION INSTRUCTION

Arntsen first contends that the trial court violated his Sixth Amendment right to have the jury instructed on his theory of case by refusing to give a jury

instruction on voluntary intoxication. We disagree.

A jury may be instructed on voluntary intoxication only if there is substantial evidence that the defendant's drinking affected his ability to form the necessary mental state to commit the charged crime.[5] By itself, evidence of drinking is not enough to warrant the instruction; there must be substantial evidence that the alcohol affected the defendant's mind or body.[6] Where a trial court's decision to not give a jury instruction is based on the facts of the case, we review the decision for abuse of discretion.[7]

Arntsen fails to demonstrate error. Arntsen testified that he snorted cocaine some time the night before the incidents leading to his arrest. He did not testify about how the cocaine affected him in any way. Arntsen also testified that he drank gin with Harris some time after midnight. Although Arntsen testified that Anna thought that he was "still a little too intoxicated" to drive when they left Andy's Motel together some time before Anna's arrest around 6:00 a.m., there was no evidence that the alcohol had any affect on his mind or body at the time the police began following him after 9:30 a.m.[8]

Under these circumstances, Arntsen fails to demonstrate that the trial court abused its discretion by declining to instruct the jury on voluntary intoxication.

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[5] State v. Gabryschak, 83 Wn. App. 249, 252, 921 P.2d 549 (1996).
[6] Id. at 253.
[7] State v. Walker, 136 Wn.2d 767, 771, 966 P.2d 883 (1998).
[8] Cf., State v. Kruger, 116 Wn. App. 685, 692, 67 P.3d 1147 (2003) (defendant entitled to voluntary intoxication instruction because there was "ample evidence of his level of intoxication on both his mind and body, e.g., his 'blackout,' vomiting at the station, slurred speech, and imperviousness to pepper spray.")

SAME CRIMINAL CONDUCT

Arntsen next argues that the trial court abused its discretion by counting the attempting to elude conviction and the unlawful possession of a firearm conviction as separate crimes for sentencing purposes. We disagree.

If two current offenses encompass the same criminal conduct, then those current offenses will only count as one point in calculating the offender's score.[9] The same criminal conduct requires two or more crimes to involve (1) the same criminal intent, (2) the same time and place, and (3) the same victim.[10] "If any one of these elements is missing, the offenses must be individually counted toward the offender score."[11] A sentencing court's determination of same criminal conduct will be reversed only for a clear abuse of discretion or misapplication of law.[12]

When considering whether crimes encompass the same criminal intent, courts focus on the extent to which the criminal intent, viewed objectively, changed from one crime to the next.[13] If the crimes are committed for different purposes they are not considered to be part of the "same course of conduct."[14] "This analysis may include, but is not limited to, the extent to which one crime furthered the other, whether they were part of the same scheme or plan and

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[9] RCW 9.94A.400(1)(a); State v. Haddock, 141 Wn.2d 103, 108, 3 P.3d 733 (2000).

[10] Haddock, 141 Wn.2d at 109-10.

[11] Id.

[12] Id. at 110.

[13] State v. Dunaway, 109 Wn.2d 207, 215, 743 P.2d 1237 (1987), corrected, 749 P.2d 160 (1988).

[14] Haddock, 141 Wn.2d at 113.

whether the criminal objectives changed."[15]

Arntsen contends that the crimes had the same intent in that he attempted to elude police because he was a "convicted felon with a handgun" and both crimes furthered the single purpose of feloniously possessing a firearm. But viewed objectively, the crimes have different purposes. Arntsen's intent in committing the unlawful possession of a firearm crime was to possess a firearm. In contrast, his intent in the attempting to elude crime was to avoid being arrested. Commission of one crime merely to escape the consequences of another crime represents a change in intent.[16] Where a defendant has the opportunity to decide to end the criminal incident but goes on to commit additional crimes, the later crimes do not 'further' the earlier crimes.[17]

There was no abuse of discretion by the trial court deciding that these two crimes did not constitute the same criminal conduct.

RESTITUTION

Arntsen also challenges the trial court's restitution order, arguing that there was no causal nexus between the crime and the damages sought. We disagree.

Restitution may be imposed if it is authorized by statute.[18] We review an order of restitution for abuse of discretion.[19] A trial court abuses its discretion

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[15] State v. Calvert, 79 Wn. App. 569, 578, 903 P.2d 1003 (1995).

[16] Dunaway, 109 Wn.2d at 217; see also State v. Flake, 76 Wn. App. 174, 180-81, 883 P.2d 341 (1994) (hit and run offense following commission of vehicular assault did not involve the same objective intent as defendant committed the latter crime to avoid responsibility for the earlier one).

[17] State v. Price, 103 Wn. App. 845, 858, 14 P.3d 841 (2000).

[18] State v. Vinyard, 50 Wn. App. 888, 891, 751 P.2d 339 (1988).

when it orders restitution for a loss that is not causally related to the defendant's crime.[20]

Arntsen claims that the jury's decision to acquit him of the assault charges demonstrates that he did not intentionally strike the detectives' car such that there was no causal link between the attempt to elude and the damage to the car. But the restitution ordered was not based on the assaults. Rather, the trial court found that Arntsen was still attempting to elude the pursuing officers when he rammed Detective Honnen's car. Given Arntsen's admission at trial that he backed up onto Honnen's car while attempting to avoid arrest, Arntsen fails to demonstrate an abuse of discretion in imposing restitution.

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

Suppression of Firearm Evidence

Arntsen argues that the firearm evidence should have been suppressed under article I, section 7 of the Washington Constitution. We disagree.

Arntsen first claims that the police did not have a lawful basis to stop him based on the information they learned from Harris, Britt, and Perez. He claims Harris was a known drug dealer and Britt and Perez were prostitutes, all with extensive criminal histories. He cites to numerous cases holding that an informant's tip must be supported by certain indicia of reliability and credibility to justify a forcible investigatory stop or to establish probable cause to arrest.[21] But

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[19] Id.

[20] Id.

[21] See, e.g., Aguilar v. Texas, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964); Spinelli v. United States, 393 U.S. 410, 89 S. Ct. 584 21 L. Ed. 2d 637 (1969); State v. Sieler, 95 Wn.2d 43, 621 P.2d 1272 (1980); State v. Cole, 128 Wn.2d 262,

Arntsen fails to establish that case law on reliability of informants supports suppression of the firearm evidence in this case.

Harris reported to police that he was a victim of an armed robbery. He personally provided oral and written statements to Officer Frausto, who responded to this report. Britt and Perez claimed to be witnesses and also provided oral and written statements that Officer Frausto believed to be consistent with the essentials of Harris's report of an armed robbery by Arntsen. Police were aware of the criminal histories of these witnesses during the investigation. Nevertheless, there is no persuasive evidence that these witnesses provided unreliable information to police that Arntsen had committed an armed robbery of the automobile that his wife later drove back to Andy's Motel.

We also reject Arntsen's claim that he received ineffective assistance of counsel when his attorney failed to move for suppression of the firearm evidence based on the alleged unreliability of the statements provided by Harris, Britt, and Perez. Counsel's representation was not deficient because such a motion would not have been successful.

Arntsen next contends that the recent decision in Arizona v. Gant requires suppression of the firearm found in his car following his arrest.[22] We

287, 906 P.2d 925 (1995); State v. Vandover, 63 Wn. App. 754, 822 P.2d 784 (1992); State v. Jones, 85 Wn. App. 797, 934 P.2d 1224 (1997); State v. Hopkins, 128 Wn. App. 855, 117 P.3d 377 (2005); State v. Lesnick, 84 Wn.2d 940, 944, 530 P.2d 243 (1975); State v. Bowers, 36 Wn. App. 119, 122-23, 672 P.2d 753 (1983); State v. Gaddy, 152 Wn.2d 64, 71-72, 93 P.3d 872 (2004).

[22] __ U.S. __, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009).

disagree.

In Gant, the United States Supreme Court held that in the absence of a warrant or another exception to the warrant requirement, police may "search a vehicle incident to a recent occupant's arrest only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search" or "when it is 'reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.'"[23] Police arrested Gant for driving with a suspended license, handcuffed him, locked him in the back of a patrol car, and then searched his car and discovered cocaine in the pocket of a jacket in the backseat.[24] The search was unreasonable under the Fourth Amendment because Gant was secured and not within reaching distance of the passenger compartment at the time of the search.

In State v. Patton,[25] our state supreme court held "that Gant applied retroactively to render unconstitutional under article I, section 7 of the Washington Constitution a pre-Gant search."[26]

This court recently applied the rules of these cases in State v. Wright.[27] There, police stopped Wright for driving without his headlights on after sunset. As the police officer approached his car, he smelled a strong odor of marijuana coming from the car. He asked to see the registration for the car, and Wright

[23] Gant, 129 S. Ct. at 1719 (quoting Thornton v. United States, 541 U.S. 615, 632, 124 S. Ct. 2127, 158 L. Ed. 2d 905 (2004) (Scalia, J., concurring in judgment)); State v. Gibson, 152 Wn. App. 945, 954 n.8, 219 P.3d 964 (2009).

[24] Gant, 129 S. Ct. at 1714.

[25] 167 Wn.2d 379, 395-96, 219 P.3d 651 (2009).

[26] State v Riley, 154 Wn. App. 433, 447, 225 P.3d 462 (2010).

[27] __ P.3d __, 2010 WL 1531484, No. 62142-4-I (April 19, 2010).

appeared nervous as he responded to the officer's request. When Wright opened the glove compartment of the car, the officer saw a large amount of cash. Based on these circumstances, the officer arrested Wright for possession of marijuana. Thereafter, the officer obtained the assistance of a K-9 dog, which alerted to the presence of drugs in the car. A search of the passenger's compartment revealed marijuana and other illegal drugs. Following a search of the car's trunk based on a warrant, police discovered further illegal drugs and paraphernalia.

The State charged Wright with possession with intent to deliver illegal drugs. Wright did not move to suppress the drugs or the paraphernalia, but did move to suppress statements he made to the police. At a bench trial, the court convicted him of possession with intent to deliver illegal drugs.

On appeal, Wright challenged the stop only. We affirmed.

Three days after the opinion was filed, Wright moved for reconsideration on the basis of Gant. Thereafter, he also claimed Patton supported his motion. After obtaining additional briefing of the parties, we again affirmed in a new opinion.

We noted that Gant recognized that "circumstances unique to the vehicle context justify a search incident to a lawful arrest when it is 'reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.' Thornton v. United States, 541 U.S. 615, 632, 124 S. Ct. 2127, 158 L. Ed. 2d 905 (Scalia, J., concurring in judgment). In many cases, as when a recent

occupant is arrested for a traffic violation, there will be no reasonable basis to believe the vehicle contains relevant evidence. See, e.g., Atwater v. Lago Vista, 532 U.S. 318, 324, 121 S. Ct. 1536, 149 L. Ed. 2d 549 (2001); Knowles v. Iowa, 525 U.S. 113, 118, 119 S. Ct. 484, 142 L. Ed. 2d 492 (1998). But in others, including Belton and Thornton, the offense of arrest will supply a basis for searching the passenger compartment of an arrestee's vehicle and any containers therein."[28]

We noted further that "While the Court did not elaborate on the reasonable belief standard, the opinion makes clear it requires less than probable cause." Wright, 2010 WL 1531484, slip op. at *5; Gant, 129 S. Ct. at 1721. (The reasonable belief standard is analogous to the "reasonable suspicion" standard required to justify a Terry search. Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). See Adams v. Williams, 407 U.S. 143, 146, 92 S. Ct. 1921, 32 L. Ed. 2d 612 (1972). (Terry search permissible if officer "has reason to believe that the suspect is armed and dangerous.")). The court in Gant also emphasized that a search incident to arrest is not the only exception to the warrant requirement, and its holding does not implicate other established exceptions. Those exceptions include situations where an officer has reasonable suspicion that an individual is dangerous "and may gain immediate control of weapons" in the car, Michigan v. Long, 463 U.S. 1032, 1049, 103 S. Ct. 3469, 77 L. Ed. 2d 1201 (1983) (footnote omitted), and the recognized automobile exception under the Fourth Amendment that allows a warrantless

[28] Wright, slip op. at *5 (quoting Gant, 129 S. Ct. at 1719).

search of an automobile for evidence relevant to both the offense of arrest and other offenses. United States v. Ross, 456 U.S. 798, 807-09, 102 S. Ct. 2157, 72 L. Ed. 2d 572 (1982)."[29]

As for the state constitution, we held that "Because the search incident to arrest was based on probable cause to arrest for possession of marijuana, Wright's reliance on article I, section 7 and Patton is misplaced."[30]

Wright and the authorities on which it relies control the disposition of this case. Arntsen claims that the search of his car was unconstitutional because he was secured and not within reach of the passenger compartment at the time of the search. He is correct that the record shows these facts. He further contends that police did not have probable cause to arrest him for any crime for which a search of the car could be expected to yield evidence. We disagree.

Police had probable cause to believe that Arntsen had committed the crimes of robbery and attempting to elude at the time of his arrest. As for the crime of robbery, probable cause was based on the report of the victim and witnesses to an alleged armed robbery. Moreover, Detective Honnen testified at trial that he had his gun drawn after police shot Arnsten twice at the 7-Eleven store because he thought it highly likely they would be involved in a gun fight due to the reported armed robbery and ensuing pursuit. Finally, Arntsen testified at trial that the gun was in the car at the time of arrest, disputing only its location within the car. The search of the car for the firearm was not

[29] Id.
[30] Id. at 6.

unconstitutional under either Gant or Patton.

Because there was a sufficient basis for the search of the car on the basis of the arrest for robbery, we need not address Arntsen's alternative argument that the arrest for attempting to elude did not support search of the car for the gun.

"FRUIT OF THE POISONOUS TREE"

Arntsen also contends that his convictions must be dismissed as "fruit of the poisonous tree" resulting from Harris's false report and police misconduct. We disagree.

Arntsen admits that he has provided no authority to support his claim that his convictions should be dismissed because Harris's allegedly false report led police to decide to stop him. Moreover, contrary to Arntsen's assertions, the State's decision to dismiss the robbery charge does not constitute a finding or determination that Harris's report was actually false. Arntsen fails to demonstrate grounds for the relief he seeks.

Similarly, Arntsen fails to establish police misconduct justifying dismissal of his convictions. Cases about tips provided by informants or false statements by police when seeking warrants are not applicable to the circumstances of this case. Nothing in the record supports an allegation of misconduct in Detective Honnen's decision, while investigating a report of an armed robbery, to conduct this stop of Arntsen based on the information then known by police.

VENUE

Finally, Arntsen claims that his constitutional right to proper venue was violated when counts II – V were tried in Snohomish County but based on events that occurred solely in King County. We disagree.

Article I, section 22 of the Washington Constitution provides criminal defendants have the right to a speedy and public trial by an impartial jury "of the county in which the offense is charged to have been committed." A defendant may waive the right to challenge venue.[31] We review a decision denying a change of venue for abuse of discretion.[32]

CrR 5.1 provides:

COMMENCEMENT OF ACTIONS

(a) Where Commenced. All actions shall be commenced:
(1) In the county where the offense was committed;
(2) In any county wherein an element of the offense was committed or occurred.
(b) Two or More Counties. When there is reasonable doubt whether an offense has been committed in one of two or more counties, the action may be commenced in any such county.
(c) Right To Change. When a case is filed pursuant to section (b) of this rule, the defendant shall have the right to change venue to any other county in which the offense may have been committed. Any objection to venue must be made as soon after the initial pleading is filed as the defendant has knowledge upon which to make it.

CrR 5.2 provides:

CHANGE OF VENUE

(a) When Ordered—Improper County. The court shall order a change of venue upon motion and showing that the action has not been prosecuted in the proper county.
(b) When Ordered—On Motion of Party. The court may order a change of venue to any county in the state:
(1) Upon written agreement of the prosecuting attorney and the

[31] State v. Dent, 123 Wn.2d 467, 479, 869 P.2d 392 (1994).
[32] State v. Rockl, 130 Wn. App. 293, 297, 122 P.3d 759 (2005).

defendant;

(2) Upon motion of the defendant, supported by affidavit that he believes he cannot receive a fair trial in the county where the action is pending.

(c) Discharge of Jury. When the court orders a change of venue it shall discharge the jury, if any, without prejudice to the prosecution, and direct that all the papers and proceedings be certified to the superior court of the proper county and direct the defendant and the witnesses to appear at such court.

Arntsen claims that the trial court violated his constitutional rights by making him choose between his right to mandatory joinder and his right to venue. The record does not support his claim.

Mandatory joinder is required where the offenses are "related offenses," in that "they are within the jurisdiction and venue of the same court and are based on the same conduct."[33] Permissive joinder is authorized where the offenses are based "on a series of acts connected together or constituting parts of a single scheme or plan."[34] Cases involving separate acts against different victims are not subject to mandatory joinder.[35]

It is undisputed that the alleged offenses were committed in different counties. Moreover, the robbery and the assaults involved different victims. Accordingly, the trial court properly determined that joinder was permissive and not subject to mandatory joinder in this case.

Arntsen cannot demonstrate a "right to joinder" as he claims in this case. The Snohomish County prosecutor did not agree to a change of venue for count

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[33] CrR 4.3.1(b)(1).

[34] CrR4.3(a)(2); State v. Lee, 132 Wn.2d 498, 501, 939 P.2d 1223 (1997).

[35] See, e.g., Lee, 132 Wn.2d at 504-05 (taking rent money from numerous different victims and failing to return it was not the same conduct as trespass and theft of rent from the homeowner).

I, the robbery charge that was based on actions in Snohomish County. Thus, Arntsen had no right to a change of venue to King County on that count. Under these circumstances, Arntsen cannot demonstrate an abuse of discretion in the trial court's initial ruling that he could choose between permissive joinder of count I to the other charges in Snohomish County and a change of venue to King County of counts II – V only.

Arntsen contends that his refusal to sign the trial court's findings regarding his waiver in open court and on the record of the challenge to venue on counts II – V and his later objection and motion to reconsider somehow invalidate his waiver. He provides no authority to support such a result. Similarly, Arntsen provides no authority to support his claim that a challenge to venue, once affirmatively waived, may be reasserted after jeopardy has attached.[36]

Accordingly, we reject his claims that his trial in Snohomish County violated his rights.

We affirm the judgment and sentence.

Cox, J.

[36] Dent, 123 Wn.2d at 480 (although challenge to venue is waived if not presented before jeopardy attaches, where *evidence* raises question of venue for the first time at trial, defendant must raise issue at the end of the State's case).

WE CONCUR:

Leach, A.C.J. Becker, J.